

*Approved First Reading – December 14, 2012*

*Proposed Second Reading – January 25, 2013*

*PASSED – January 25, 2013*

**ARTICLE V**  
**Beach Concessions**

**§52-17 Definitions.**

As used in this Article, the following terms shall have the meanings indicated:

**ANNUAL FEE** - The compensation due the Town from the Concessionaire each year for which he/she is awarded privileges under this Article.

**BEACH** – That portion of the shore of the Atlantic Ocean which extends from the mean low water line inland to the landward toe of the primary dune.

**BEACH SERVICE** - The selling or renting of services or goods, including, but not limited to, floats, rafts, boogie boards, other recreational equipment, umbrellas, chairs, food and/or beverages.

**CONCESSIONAIRE** - Any person, corporation, partnership, unincorporated association or other business entity to whom or which the privileges granted under this Article may be awarded. Such rights shall not be assignable except with the written approval of the Town Council.

**CONTRACT** - The formal document between the Town of Fenwick Island and the Concessionaire that contains the contractual details of the Beach Service.

**SEASON** – The time period each year designated by the Town Council in the Contract.

**§52-18 Concessionaires on Beach.**

No Concessionaire shall be allowed to operate, manage, sell or solicit a Beach Service on the Beach within the corporate limits of the Town of Fenwick Island without a written Contract awarded by the Town Council.

**§52-19 Cleaning of Beach areas.**

The Concessionaire shall be responsible for keeping the Beach area immediately surrounding the Concessionaire's Beach Service free from the accumulation of waste materials, surplus materials and rubbish. The Town shall allow the Concessionaire the use of Town trash cans, an arrangement which shall be set forth with more specificity in the Contract.

**§52-20 Supervision of Concessionaire.**

The Town Manager shall oversee and supervise the Concessionaire and all operations granted by the Beach Service Contract approved by the Town Council pursuant to this Article.

**§52-21 Prequalification Application.**

The Town Manager shall prequalify all persons or company desiring to submit a Concessionaire application pursuant to this Article.

**§52-22 Public notice to submit applications.**

- A. The Town Manager shall advertise in two newspapers that the Town is seeking prequalification applications and bid proposals from persons or companies qualified to be a Concessionaire and to operate a Beach Service in Town.
- B. Bids shall be opened by the Town Manager at the time and place specified in the invitation to bid and/or other bid documents. The successful bid must be accepted and approved by Town Council.

**§52-23 Bids; performance bond.**

- A. No bid proposal will be considered unless the same is accompanied by a cash deposit in the form of a certified check, which must be drawn on a solvent FDIC-insured banking institution, made payable to the Town of Fenwick Island. The amount of the cash deposit required shall be set forth in the invitation to bid and/or other bid documents provided by the Town. A satisfactory bid bond will also be acceptable in lieu of a cash deposit. All bid bonds shall be issued by a surety company approved by the Town and authorized to transact business in the State of Delaware
- B. The successful bidder shall deliver to the Town an executed performance bond in an amount at least equal to one hundred percent (100%) of the successful bidder's total bid amount. All performance bonds shall be issued by a surety company approved by the Town and authorized to transact business in the State of Delaware. Said bonds shall be approved by the Town prior to execution of the Contract.

**§52-24 Return of bid bonds.**

The bid bonds or cash deposits of the unsuccessful bidders will be returned within thirty (30) days after the opening of the bids. Upon execution of the Contract and delivery of a Town-approved performance bond, the bid bond or cash deposit, whichever is applicable, shall be returned to the successful bidder.

**§52-25 Decision of Town Council; grounds for refusal.**

The Contract shall be awarded to the person, Concessionaire who or which has satisfactorily complied with this Article and the bidding process and who or which appears to the Town Council to be the applicant most likely to render the best service to the Town. The Town Council's decision shall be based on the history, experience, and reputation of the applicant as well as the applicant's ability in terms of sufficient capital and adequate equipment to successfully operate the Beach Service and carry out the expectations and obligations set forth in the Contract. The Town reserves the right to refuse any and all bids.

**§52-26 Duties of Concessionaire; transfer of ownership; complaints.**

- A. The Concessionaire shall be expected to maintain the Beach Service and all equipment, facilities and structures used in connection therewith in first class condition and in such minimum quantities as the Town Manager shall require. The Concessionaire shall employ courteous and competent personnel and shall operate the Beach Service in an efficient manner.
- B. The failure of the Concessionaire to employ courteous and competent personnel shall be cause for termination of the Contract by the Town.
- C. Any transfer or change of ownership or operation of the Beach Service, without having first submitted written notice to and received written approval from the Town Manager, shall be cause for termination of the Contract by the Town.

- D. All complaints regarding the Concessionaire's personnel and/or service shall be submitted in writing to the Town Manager within five (5) days of the incident or offense giving rise to the complaint. The Town Manager may impose liquidated damages in an amount set forth in the "Fee Schedule" approved by Resolution of the Town Council if, after a reasonable investigation of the complaint received, the Town Manager determines that a violation of the Concessionaire's Contract or this Article has occurred.

**§52-27 Storage.**

All goods and equipment used in connection with the Beach Service shall be stored in a manner and/or in structures approved by the Town, all of which must be built in accordance with the specifications set forth in the bid documents, Contract and/or as otherwise approved by the Town Manager.

**§52-28 Liability insurance required; indemnification.**

Each Concessionaire to whom or which a Contract is awarded pursuant to this Article shall carry general liability, bodily injury and property damage insurance in such amounts as are specified in the Contract. The Concessionaire shall indemnify the Town and hold the Town, as well as its agents and employees, harmless against any claim or loss, whatsoever, arising out of or related to negligence or misconduct on the part of the Concessionaire, his agents, contractors, employees, successors or assigns, all as more fully specified in the bidding documents and Contract.

Posted: January 28, 2013